LCA/316/2008

LANDS TRIBUNAL ACT 1949

COMPENSATION – compulsory purchase – investment property – replacement property acquired by claimant – what costs and expenses to be included in compensation – Land Compensation Act 1961 ss 5 and 10A

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN **TABARAK SADIQ**

and

ASMA HASHMI **Claimants**

and

STOKE-ON-TRENT CITY COUNCIL **Respondent**

Re: Dwelling house
10 Clarke Street
Shelton
Stoke-on-Trent ST1 4PT

Before: The President

Determination on written representations

The following cases are referred to in this decision:

Nelson v Burnley Borough Council ACQ/93/2005 unreported
Harvey v Crawley Development Corporation [1957] 1 QB 485
Horn v Sunderland Corpn [1941] 2 KB 26

DECISION

1. This is a reference by consent relating to the purchase by the respondents of a dwelling house owned by the claimants at 10 Clarke Street, Shelton, Stoke-on-Trent. The premises are within a proposed clearance area, and the respondents have agreed to buy them in advance of the making of a compulsory purchase order and (I infer) to pay as the price the compensation that would be payable if they were acquiring the premises compulsorily. The reference is made in order to determine what heads of claim fall within section 10A of the Land Compensation Act 1961.

2. The amounts in issue are small, and the parties have asked for the matter to be dealt with by written representations. Very little factual information has been provided, and the submissions advanced are very limited in their scope. Nevertheless I believe that there is sufficient material before me to enable me to provide the parties with the decision that they seek. I am told that the premises are an investment property (so that the owners are not in occupation), and it appears that they are proposing to buy a replacement property in Oxford.

3. The amounts in relation to the heads of claim have been agreed as follows:

(a)	Early redemption penalty relating to mortgage outstanding on 10 Clarke Street, Shelton, Stoke-on-Trent	£800.00
(b)	Mortgage arrangement fee on purchase of replacement investment property in Oxford	£1,430.00
(c)	Survey fees incurred on purchase of replacement investment property in Oxford	£411.25
(d)	Removal expenses incurred in moving items of furniture etc. from Stoke-on-Trent to Oxford	£500.00
(e)	Loss on in situ value of fitted carpets and curtains remaining at 10 Clarke Street, Stoke-on-Trent	£1,000.00
(f)	Legal fees incurred on purchase of replacement investment property at Oxford	£2,194.37
(g)	Disconnection of various appliances from 10 Clarke Street, Shelton and reconnection at replacement investment property in Oxford	£200.00
(h)	Application for gas and electrical certificates for replacement investment property in Oxford	£232.67
	TOTAL	**£6,768.29**

4. Section 10A makes the following provision in relation to the expenses of owners not in occupation:

> "Where, in consequence of any compulsory acquisition of land—
>
> (a) the acquiring authority acquire an interest of a person who is not then in occupation of the land; and

(b) that person incurs incidental charges or expenses in acquiring, within the period of one year beginning with the date of entry, an interest in other land in the United Kingdom,

the charges or expenses shall be taken into account in assessing his compensation as they would be taken into account if he were in occupation of the land."

5. The respondents accept that items (c) and (f), survey and legal fees, should be paid, and they say that it appears that item (b), the mortgage arrangement fee payable on the replacement property, is also payable in the light of the decision of this tribunal in *Nelson v Burnley Borough Council* ACQ/93/2005 unreported. They say, however, that items (a), mortgage early redemption penalty, (d), removal expenses, and (e), loss on carpets and curtains, are not valid items of claim because they are not "incidental charges or expenses incurred in acquiring" the replacement property. As for (g), disconnection and reconnection of appliances, they say that disconnection is a loss associated with the sale of the subject premises and is not a valid item of claim; while reconnection costs, though necessary for the occupation of the replacement property, may not be "incidental charges or expenses incurred in acquiring" it. Finally in relation to item (h), the application for gas and electrical certificates, while they accept that such certificates are necessary requirements for letting out the replacement property, they question whether they are "incidental charges or expenses incurred in acquiring" it.

6. The claimants' surveyor, Mr A J McKeon FRICS of Butters John Bee of Stoke-on-Trent, says that section 10A should be interpreted so that all the items are claimable.

7. The evident purpose of section 10A, which was inserted by the Planning and Compensation Act 1991, is to provide for certain expenses of a claimant, who, because he is not in occupation, cannot claim them as compensation for disturbance. In *Harvey v Crawley Development Corporation* [1957] 1 QB 485 the Court of Appeal held that a householder whose home had been compulsorily acquired was entitled to disturbance compensation that included not only her removal expenses and the costs of adjusting her curtains and carpets for her new home but also her surveyors' fees, legal costs and travelling expenses incurred by her both in an abortive purchase of a new home and in the purchase of the new home itself. But the court pointed out the limitations of the right to compensation for disturbance. Denning LJ at 493, having said that the money spent by the claimant on these items was properly to be regarded as compensation for disturbance, went on:

> "But I would not like this to be taken too far. Cases were put in the course of argument. Supposing a man did not occupy a house himself but simply owned it as an investment. His compensation would be the value of the house. If he chose to put the money into stocks and shares, he could not claim the brokerage as compensation. That would be much too remote. It would not be the consequence of acquisition but the result of his own choice in putting money into stocks and shares instead of putting it on deposit at the bank. If he chose to buy another house as an investment, he would not get the solicitors' costs of the purchase. Those costs would be the result of his own choice of investment and not the result of the compulsory acquisition."

8. Section 10A was clearly designed to mitigate the effect of this limitation on the scope of compensation for disturbance. It does so in terms that are specific. To be taken into account in assessing compensation payable to the person whose land is acquired are the "incidental charges or expenses in acquiring" an interest in other land. The charges and expenses so recoverable must be incidental to the acquisition of the interest. Charges and expenses incurred in doing things to the land in which the interest is acquired are not covered, nor are removal expenses or the alteration of carpets and curtains.

9. As the respondents acknowledge, items (c) and (f), the survey and legal fees incurred on the purchase of the Oxford property as a replacement investment, fall squarely within the provision. Such items are recoverable, in my judgment, to the extent that the new property is a replacement for what is lost. If property many times the value of that compulsorily acquired were bought, all the fees incurred in the purchase would not be recoverable because they would not have been incurred "in consequence of the compulsory acquisition" of the claimant's land. As for item (b), the mortgage arrangement fee, such a fee in my judgment is in principle recoverable if the mortgage on the replacement property is commensurate with such mortgage as the claimant had on the property compulsorily acquired. The arrangement fee could properly be said in these circumstances to have been incurred in consequence of the compulsory acquisition and to be incidental to the purchase of the new property. This conclusion accords with that of the Tribunal (P R Francis FRICS) in *Nelson v Burnley Borough Council*.

10. Item (d), removal expenses, the part of item (g) that relates to the reconnection of appliances in the replacement property, and item (h), the application for gas and electricity certificates for the replacement property, are clearly not recoverable, in my judgment. They are expenses that are incidental not to the acquisition of the replacement property but to its fitting out.

11. This leaves item (a), the early redemption penalty for the mortgage on the property compulsorily acquired, (e), the loss on the in situ value of the fitted carpets and curtains there, and that part of (g) that relates to the disconnection of the appliances there. None of these fall within section 10A. They represent losses suffered not in connection with the purchase of the new property but in consequence of the compulsory acquisition of the property in Stoke-on-Trent. However, all these items ought, in my judgment, to be recoverable because they are losses imposed on the claimants by the compulsory acquisition. The losses incurred are the direct and unavoidable consequence of the acquisition. They are not too remote. If the claimants are to be put "so far as money can do it, in the same position as if [their] land had not been taken from [them]" (see *Horn v Sunderland Corpn* [1941] 2 KB 26 per Scott LJ at 42), the compensation must include these losses. Although not within section 10A, they do in my judgment fall squarely within rule (6) of section 5 of the 1961 Act and fall to be included in the compensation accordingly.

12. I hope that in the light of these conclusions the parties will be able to agree the amount of compensation payable. While the Tribunal has power to award costs, it may be that the parties will be able to reach agreement on this matter also. If either party, however, seeks a further determination, either in relation to the compensation or as to costs, it must do so within

21 days of the date of this decision. In the absence of any such application the decision will become final.

Dated 16 December 2008

George Bartlett QC, President